

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: June 22, 2006

TO : Gary W. Muffley, Regional Director
Region 9

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: National Association of Letter
Carriers Branch 14 536-2548
(United States Postal Service) 536-2560
Case 9-CB-11525 536-2581-0180
536-2581-0180-5000
536-2581-3356
536-2581-6700

This case was submitted for advice as to whether the Union violated its duty of fair representation under Section 8(b)(1)(A) of the Act by failing to advise and/or assist an employee in revoking his dues checkoff authorization. We conclude that the Region should dismiss this charge, absent withdrawal, because the Union's actions were not arbitrary and arguably not even negligent.

FACTS

The United States Postal Service (Employer) and National Association of Letter Carriers Branch 14 (Union) are parties to a collective bargaining agreement that contains a dues checkoff provision. Under that provision, the Employer must checkoff and remit dues to the Union upon authorization by an employee who executes a Form 1187: Authorization for Deduction of Dues.¹ Once executed, the Form 1187 is irrevocable for one year and is automatically renewable for each successive year unless revoked by the employee through written notice to the Employer and the Union "not more than twenty (20) days and not less than ten (10) days prior to the expiration of each period of one (1) year." In other words, the employee may revoke the Form 1187 anytime between 10 and 20 days before the form's anniversary date.² This revocation procedure is written on the Form 1187 and is contained in the Employer's Employment Labor Manual, which is available to employees and the public on the internet.

¹ The collective bargaining agreement does not have a union security clause.

² Hereinafter, the "20/10 day rule."

The Charging Party is a mail carrier in the Louisville, Kentucky area. On January 3, 2006,³ the Charging Party told a Union steward that he wanted to drop out of the Union, that January 20 was his anniversary date, and that he needed the proper paperwork to resign and stop the deduction of dues from his paycheck.⁴ The steward suggested that the Charging Party "scribble" something on a piece of scrap paper and submit it. The Charging Party then urged the steward to confirm the dues revocation procedure, as he believed that an employee had to complete paperwork in order to stop dues checkoff. The steward responded that he would check and get back to the Charging Party. On January 5, the steward told the Charging Party that he would obtain an answer at the Union's Executive Board meeting scheduled for January 9. It is not clear whether the steward obtained any information at the January 9 meeting. On January 10, the last day of the revocation window period under the 20/10 day rule, the Charging Party asked the steward if he had an answer. The steward took the Charging Party to another employee, who said paperwork available in the Employer's personnel office was necessary to revoke the dues checkoff authorization. However, that same day, when the Charging Party went to the personnel office, it was closed.⁵ On January 11, the Charging Party contacted the personnel office but was advised that January 10 was the last day to submit the required paperwork and that he would have to wait another year. The Charging Party explained that he had only been told the proper revocation procedure the previous day, but could not comply because the personnel office was closed. The personnel representative advised the Charging Party to take the matter up with his Union.

On January 12, the Charging Party told the steward that he was unable to revoke his checkoff authorization. The steward apologized and said he was unaware of the open period restrictions, i.e., the 20/10 day rule. The steward suggested that the Charging Party discuss the issue with "the powers that be," meaning local Union officers. The Charging Party then informed the Union Vice President about his situation. The Vice President responded "[w]hy did you ask for a Union steward anyway, why didn't you just call personnel?" and then hung up. On January 13, the Charging

³ All dates are in year 2006 unless otherwise indicated.

⁴ Under the 20/10 day rule, the revocation period window during which the Charging Party could timely revoke the checkoff authorization opened on December 31, 2005.

⁵ That office is only open three times per week due to downsizing.

Party wrote several Union officers, including the National President, about his difficulties revoking checkoff authorization. On January 18, the Union President replied that the Union was not responsible for providing the Charging Party with the necessary forms, and that "all USPS forms are provided through your local personnel office."

ACTION

We conclude that the Region should dismiss this charge, absent withdrawal, because the Union's actions were not arbitrary and arguably not even negligent.

A breach of a union's duty of fair representation occurs "only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith."⁶ A union engages in arbitrary conduct when it undertakes to process a grievance or take some other action and then fails to do so or abandons taking that action without explanation, conduct that the Board has described as "perfunctory," or a "willful failure" to take action.⁷

Mere negligence, ineptitude or poor judgment is insufficient to establish a breach of a union's duty of fair representation.⁸ Thus, while a union must refrain from deliberately keeping employees uninformed or misinformed about grievances or other matters affecting employment, there will be no violation where the failure to inform or the giving of misinformation is attributable to mere negligence.⁹

⁶ Vaca v. Sipes, 386 U.S. 171, 190 (1967).

⁷ See, e.g., SEIU Local 3036 (Linden Maintenance Corp.), 280 NLRB 995, 997 (1986); Union of Security Personnel (The Church Charity Foundation), 267 NLRB 974, 980 (1983); Retail Clerks Union Local 324 (Fed Mart Stores, Inc.), 261 NLRB 1086, n.2 (1982).

⁸ See, e.g., Teamsters Local 692 (Great Western Unifreight System), 209 NLRB 446, 448 (1974).

⁹ See Painters Local 1310 (Reliance Electric), 270 NLRB 506, 506-07 (1984). Teamsters Local 814 (Beth Israel Medical), 281 NLRB 1130 (1986) is distinguishable because the union's conduct as a whole, which included an intentional cover-up of the initial filing mistake, transcended mere negligence and constituted a deliberate effort to keep the charging party misinformed concerning his grievance.

Here, the Union's failure to inform the Charging Party of the revocation procedures within the brief eligible period after he asked was not a breach of the duty of fair representation. Initially, we note that the Union steward arguably did not act negligently in responding to the Charging Party's query, even if he did not respond with utmost dispatch. The seven-day period (between January 3 and January 10) after the request does not show that the steward was indifferent to or dilatory in responding to the Charging Party.¹⁰ First, the Charging Party requested the information four days into the ten-day revocation period.¹¹ Thus, due to the Charging Party's own dilatory request, the steward had only six days to obtain an answer. In fact, the steward helped the Charging Party obtain the information within that time and, but for the closure of the personnel office on January 10, the Charging Party could have successfully revoked his checkoff authorization.

Even if the steward was slow to obtain information for the Charging Party, there is no evidence that his failure to obtain timely information was willful, or he was indifferent to the duty he undertook. There is no evidence that the steward knew that personnel was closed and intentionally waited until that last day to give the Charging Party the information so that his revocation would be untimely. Indeed, the steward apologized and acknowledged that he did not know about the 20/10 rule. Even if the steward did not follow through on his commitment to the Charging Party to inquire about the revocation procedures at the Union's Executive Board meeting on January 9, there is no evidence that any failure to do so was the result of anything more than forgetfulness.¹² Even if this evidence demonstrates

¹⁰ Compare Church Charity Foundation, 267 NLRB at 979-980 (over the course of four months, the union committed itself to file a grievance to arbitration, yet failed without explanation to process the grievance at all, in effect abandoning the grievance); Linden Maintenance Corp., 260 NLRB at 996-997 (union's continued nonaction on and abandoning of a grievance, despite assurances to the contrary, perfunctory).

¹¹ The Board has upheld the validity of this dues checkoff revocability period. See generally, Postal Service, 302 NLRB 701 (1991).

¹² Moreover, the fact that the steward initially, on January 3, told the Charging Party that he merely had to "scribble" something on a piece of paper in order to revoke his authorization is immaterial because the Charging Party never acted on those instructions.

negligence, it did not violate Section 8(b)(1)(A) as arbitrary and perfunctory.¹³

We also agree with the Region that the General Counsel's Minute in Teamsters Local 270 (UPS)¹⁴ is distinguishable. There, the Union failed to provide an employee with the requested dates of his window period to revoke his checkoff authorization. The General Counsel concluded that the failure to respond to this explicit request was tantamount to an intentional refusal to provide information.¹⁵ Here, in contrast, there is no evidence that the Union intentionally refused to provide the Charging Party with the dues revocation procedures.

¹³ We also conclude that the Union Vice President's after-the-fact insensitivity to the Charging Party's revocation problem does not turn any actions by the steward, who undertook to assist the Charging Party, into unlawful arbitrariness. See Washington-Baltimore Newspaper Guild, 239 NLRB 1321, 1322 (1979) ("[I]nsensitivity by itself does not rise to a breach of the duty of fair representation.").

¹⁴ Case 15-CB-5256, dated March 7, 2005.

¹⁵ We also note that the employee in UPS requested the information "well in advance" of the window period, whereas here, as noted above, the Charging Party first raised the matter with the Union four days into the revocation period.

Thus, in accordance with the above, the Region should dismiss the instant charge, absent withdrawal.

B.J.K.